S.B.CIVIL WRIT PETITION NO.1994/2003

The District Education Officer, Churu & Anr.
v.
The Rajasthan Non-Government Educational Tribunal, Jaipur & Ors.

DATE OF ORDER :: 24th July, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.L.Tiwari, Deputy Government Advocate.
Mr. H.Dutt, for the respondents.

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By this petition for writ a challenge is given by State of Rajasthan to the judgment dated 25.6.2002 passed by the Rajasthan Non Government Educational Tribunal, Jaipur. The Tribunal while accepting an appeal preferred by respondent Shri Jeevan Ram directed to the Director, Gramodaya Senior Secondary School, Khichiwala, District Churu to employ Shri Jeevan Ram in regular pay scale as Senior Teacher (Maths). Challenge to the aforesaid judgment is not given by the Managing Committee of Gramodaya Senior Secondary School, Khichiwala, District Churu, as such it has acquired finality against the actual party effected by the order impugned.

The contention, while giving challenge to the judgment dated 25.6.2002 by the State Government, is that under Section 19 of the Rajasthan Non Government Educational Institutions Act, 1989 (hereinafter referred to as “the Act of 1989”) the remedy of appeal is available only in the event of removal, dismissal

or discharge otherwise of an employee by a Non Government Educational Institution but not for redressal of grievance with regard to appointment. It is also urged that the competent authority under Section 28 of the Act of 1989 is empowered to reject the recommendations of the Managing Committee by recording reasons and in the instant matter the competent authority by exercising its powers under Section 28 of the Act of 1989 rejected the recommendation made by the society by recording reasons but the Tribunal without any just and valid reason quashed that order.

Respondent Shri Jeevan Ram was working with respondent Gramodaya Senior Secondary School, Khichiwala, District Churu since 1996 on temporary basis and he faced selection proceedings for regular appointment as Senior Teacher in the subject of Maths on 30.8.1997. He was kept at Sr.No.4 in the select list, the institution consequently proceeding to employ the person at higher pedestal in the merit list by discontinuing him for service, therefore, he approached Rajasthan Non Government Educational Institutions Tribunal by way of filing an application under Section 21 of the Act of 1989 for redressal of his grievances. The application submitted by employee Shri Jeevan Ram was disposed of by the Tribunal with a direction for the institution to consider and decide the representation submitted by the petitioner within

a period of one month. The representation submitted by the petitioner was not disposed of, therefore, he approached this Court at Jaipur. In the aforesaid writ petition an interim order was passed directing the parties to maintain status quo as it was existing on the date of passing of the order. During pendency of writ petition on assurance given by the employer Educational Institution to positively consider candidature of the petitioner for appointment, he withdrew the writ petition aforesaid. It is also relevant to note that the persons whose names were above respondent Shri Jeevan Ram by submitting affidavits also withdrew their claim for appointment. In the circumstances the employer recommended the competent authority to approve appointment of Shri Jeevan Ram as Senior Teacher in the subject of Maths. The competent authority rejected the recommendation made by the institution on the count that the selection was made three years earlier. Learned Tribunal rejected the decision of the competent authority on the count that there is no limitation is prescribed under the Act of 1989 and the Rules framed thereunder for appointment as a consequent to selection proceedings.

Heard counsel for the parties.

It is true that and appeal under Section 19 of the Act of 1989 could be maintained only against an

order of dismissal, removal or reduction in rank, however, for redressal of other grievances of an employee of an educational institution can be redressed under the Act of 1989 by way of filing an application under Section 21 of the Act of 1989. In the instant matter Shri Jeevan Ram was in employment of Gramodaya Senior Secondary School, Khichiwala, District Churu, therefore, merely by mentioning of Section 19 of the Act of 1989 in the application or in the judgment impugned shall not make the order bad in eye of law being without jurisdiction. The order though mentions Section 19 but in fact it is an order under Section 21 of the Act of 1989. Beside the above, it is well settled that if a substantial justice has been done and if quashing of the order under challenge restores an illegality then the writ Court can refuse to exercise its powers under Article 226 of the Constitution of India.

I do not find any error in the judgment impugned for the reason that from the date of selection proceedings respondent Shri Jeevan Ram was litigating his cause before this Court as well as before the Rajasthan Non Government Educational Institutions Tribunal, Jaipur. The competent authority should have taken into consideration the fact that the employee concerned was agitating his cause and on basis of an assurance given by the employer he withdrew the writ petition preferred before this Court.

Accordingly, this petition for writ is having no merit and the same, therefore, is dismissed.

An application is also preferred by employee Shri Jeevan Ram that the institution Gramodaya Senior Secondary School, Khichiwala, District Churu is not making payment of salary to him due to pendency of this writ petition. As the writ petition has already been dismissed, it is expected from the Managing Committee of Gramodaya Senior Secondary School, Khichiwala, District Churu that they will implement the judgment of the Tribunal and also pay required salary to the employee concerned.

(GOVIND MATHUR),J.

kkm/ps.